Appendix

Order of Appellate Term of September 29, 1966, Affirming Convictions

At an Appellate Term of the Supreme Court, First Department, held on the County Court House, Borough of Manhattan, City of New York, on the 29th day of September, 1966.

Present:—Hon. SAMUEL H. HOFSTADTER J.P.
" " SAMUEL M. GOLD)
" " GEORGE TILZER) Justices

May No. 187

THE PEOPLE OF THE STATE OF NEW YORK,
Respondent,

vs.

MARTIN HIRSHHORN,
Defendant-Appellant.

An appeal having been taken to this court by defendant from a judgment of conviction of the Criminal Court of the City of New York, County of New York, after trial before Hon. William E. Ringel, on the 2nd day of June 1965, upon the charge of violation of Penal Law, §1747 (b) and Code of Criminal Procedure, §887 (7), and having been sentenced by Hon. Irving I. Schreckinger on the 2nd day of August, 1965, as follows:

Penal Law §1747 (b)—30 days
Code of Criminal Procedure §887 (7)—10 days
Execution of both jail sentences suspended.

and the said appeal having heard and due deliberation having been had thereon,

IT IS ORDERED AND ADJUDGED that the said judgment so appealed from be and the same is hereby affirmed.

Enter

S. M. G.
Justice Appellate Term
Supreme Court, First Department

I hereby certify that the foregoing paper is a true copy of the original thereof, filed in my office on the 29th day of Sep 1966

Richard R. Bieber
Clerk of the Appellate Term,
Supreme Court, First Department.

Appendix

Certificate Denying Leave to Appeal to the Court of Appeals

STATE OF NEW YORK
COURT OF APPEALS

Before:

Hon. STANLEY H. FULD, Associate Judge

THE PEOPLE OF THE STATE OF NEW YORK,
Respondent,

against

MARTIN HIRSHHORN,
Defendant-Appellant.

I, STANLEY H. FULD Associate Judge of the Court of Appeals of the State of New York, do hereby certify that, upon application timely made by the above named appellant for a certificate pursuant to §520 of the Code of Criminal Procedure, and upon the record and proceedings herein, there is no question of law presented which ought to be reviewed by the Court of Appeals and permission to appeal is hereby denied.

Dated at New York, New York, November 17, 1966.

Stanley H. Fuld
Associate Judge

Order Denying Motion to Suppress

At a term of the Criminal Court of the City of New York, held in Part 2B, at the Courthouse, in the Borough of N. Y., City of New York, on the 14 day of May, 1965.

Docket No. 2136

Present:

Hon. ....., Judge.

The People of the State of New York

vs.

Martin Hirshhorn

Defendant

The defendant having moved for an order of the Court, suppressing the evidence seized and said motion having duly come on to be heard before this Court on the 14 day of May, 1965, and testimony having been heard by the Court, and due deliberation having been had herein, it is

Ordered that said motion be and the same is hereby denied and the Court hereby makes the following findings on the said motion. The Court agrees with defendant's contention as to the arrest concerning the checks. However, the Court accepts the officer's testimony as to the masquerading by defendant in his presence and therefor had proper grounds to make an arrest on that set of facts. The ensuing search was incident to a lawful arrest.

/s/ S. Silver
Judge

Appendix

Amended Order of Appellate Term of February 2, 1967, Affirming Convictions

At an Appellate Term of the Supreme Court, First Department, held on the County Court House, Borough of Manhattan, City of New York, on the 2nd day of February, 1967.

Present:

Hon. SAMUEL H. HOFSTADTER, J.P.
" SAMUEL M. GOLD,
" GEORGE TILZER,
Justices.

May #187

THE PEOPLE OF THE STATE OF NEW YORK,
Respondent,

vs.

MARTIN HIRSHHORN,
Defendant-Appellant.

An appeal having been taken to this court by defendant from a judgment of conviction of the Criminal Court of the City of New York, County of New York, after trial before Hon. William E. Ringel, on the 2nd day of June, 1965, upon the charge of violation of Penal Law §1747(b) and Code of Criminal Procedure §887(7), and having been sentenced by Hon. Irving I. Schreckinger on the 2nd day of August, 1965, as follows:

Penal Law §1747(b)—30 days
Code of Criminal Procedure §887(7)—10 days
Execution of both jail sentences suspended,

and the said appeal having been heard and due deliberation having been had thereon,

IT IS ORDERED AND ADJUDGED that the said judgment so appealed from be and the same is hereby affirmed. Defendant urged that: (1) the Trial Court erred in finding probable cause for the arrest of defendant, on the ground that the underlying facts did not measure up to the standards established by the United States Supreme Court or demanded by the United States Constitution; (2) Section 887(7) of the Code of Criminal Procedure is unconstitutional and violative of the First, Eighth and Fourteenth Amendments of the United States Constitution. This court held that there was adequate probable cause for the arrest of defendant and that Section 887(7) of the Code of Criminal Procedure was valid.

Enter,

S. M. G.
Justice Appellate Term
Supreme Court, First Department

I hereby certify that the foregoing paper is a true copy of the original thereof, filed in my office on the 2nd day of February, 1967.

THEODORE REITMAN
Clerk of the Appellate Term
Supreme Court, First Department

Date 2/2/67

Appendix

Trial Transcript p. 77

Motion—Defense

Mr. Gould: That is the defendant's case, Your Honor.

Mr. Moynihan: People rest.

Mr. Gould: Both sides rest. At this time, Your Honor please, the defendant respectfully moves to dismiss the complaint on the grounds that the People have failed to establish his guilt beyond a reasonable doubt.

The Court: The motion as to the 887, the masquerading, is denied. The evidence is clear and abundant that this defendant was identified by the Detective in female clothing, or recognized as the person dressed in female clothing at the time he entered the hotel; the evidence is clear and abundant that he habitually wears female clothing in a public place. These facts, taken together with the observations of the Officer, establish his guilt beyond a reasonable doubt.

With respect to the misdemeanor, the motion to acquit him of charge Number 1, the narcotic drug, the marijuana, is granted; he is found guilty of Count Number 2, the barbiturate.

* * *